

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12200-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ANDREW MCNEILL

Respondent

Before:

Mr S Tinkler (in the chair)
Mr J P Davies
Dr A Richards

Date of Hearing: 2 June 2021

Appearances

There were no appearances as the matter was dealt with on the papers.

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations made against the Respondent by the Solicitors Regulation Authority (“SRA”) were that:
 - 1.1 On Wednesday 13 February 2019, the Respondent was found to be in possession of 23 indecent images of children resulting in:
 - 1.1.1 his conviction in the Leicester Magistrates Court on 10 June 2020 of three counts making indecent images of a child.
 - 1.1.2 him being sentenced in the Crown Court at Leicester on 24 September 2020 to, among other things, eight months imprisonment suspended for 18 months, being made subject to a Sexual Harm Prevention Order for ten years and being placed on the Register of Sex Offenders for ten years.

The Respondent thereby breached any or all of Principles 2 and 6 of the SRA Principles 2011 (“the Principles”).

- 1.2 On Wednesday 13 February 2019, the Respondent was found to be in possession of a controlled drug of Class B (Cannabis) resulting in:
 - 1.2.1 his conviction in the Leicester Magistrates Court on 10 June of producing a controlled drug of Class B (Cannabis).
 - 1.2.2 him receiving in the Crown Court at Leicester on 24 September 2020, amongst other things, a fine of £150.

The Respondent thereby breached any or all of Principles 2 and 6 of the Principles.

Documents

2. The Tribunal had before it the following documents:-
 - Rule 12 Statement and Exhibit SG1 dated 5 May 2021
 - Applicant’s Statement of Costs dated 5 May 2021
 - Statement of Agreed Facts and Indicated Outcome dated 28 May 2021

Background

3. The Respondent was admitted to the Roll of Solicitors in September 2015. The Respondent remained on the Roll but did not hold a current practising certificate, his most recent practising certificate having expired on 31 October 2019, and no renewal application having been received by the SRA.

Application for the matter to be resolved by way of Agreed Outcome

4. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Indicated Outcome annexed to this

Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

Findings of Fact and Law

5. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
6. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.
7. The Tribunal considered the Guidance Note on Sanction (8th Edition–December 2020). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal considered that the Respondent's misconduct was extremely serious. He had been convicted of criminal offences, one of which was serious enough to warrant a custodial sentence. The Tribunal determined that considering the seriousness of the Respondent's misconduct the only appropriate and proportionate sanction was to strike the Respondent from the Roll. The Tribunal found that the proposed sanction was proportionate and in line with the Guidance Note on Sanction.

Costs

8. The parties agreed costs in the sum of £1,290.00. The Tribunal found the agreed sum to be reasonable and proportionate. Accordingly, the Tribunal ordered the Respondent to pay costs in the agreed sum.

Statement of Full Order

9. The Tribunal Ordered that the Respondent, ANDREW MCNEILL, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,290.00

Dated this 23rd day of June 2021

On behalf of the Tribunal



S Tinkler
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
23 JUN 2021

Case Number:

IN THE MATTER OF THE SOLICITORS ACT 1974

And

SOLICITORS REGULATION AUTHORITY

and

ANDREW MCNEILL

Applicant

Respondent

STATEMENT OF AGREED FACTS AND INDICATED OUTCOME

1. By an application dated 21 May 2021, accompanied by the statement made pursuant to Rule 12(2) of the Solicitors (Disciplinary Proceedings) Rules 2019, the Solicitors Regulation Authority ("SRA") brought proceedings before the Solicitors Disciplinary Tribunal concerning the conduct of Andrew McNeill.

2. The allegations against the Respondent, made by the SRA, are that:

2.1 On Wednesday 13 February 2019, the Respondent was found to be in possession of 23 indecent images of children resulting in:

2.1.1 His conviction in the Leicester Magistrates Court on 10 June 2020 of three counts of making indecent photographs of a child

2.1.2 Him being sentenced in the Crown Court at Leicester on 24 September 2020 to, among other things, eight months imprisonment suspended for 18 months, being made subject to a Sexual Harm Prevention Order for ten years and being placed on the Register of Sex Offenders for ten years.

The Respondent thereby breached any or all of Principle 2 and Principle 6 of the SRA Principles 2011.

2.2 On Wednesday 13 February 2019, the Respondent was found to be in possession of a controlled drug of Class B (cannabis) resulting in:

2.2.1 His conviction in the Leicester Magistrates Court on 10 June 2020 of producing a controlled drug of Class B – Cannabis

2.2.2 Him receiving in the Crown Court at Leicester on 24 September 2020, amongst other things, a fine of £150.00.

The Respondent thereby breached any or all of Principle 2 and Principle 6 of the SRA Principles 2011.

Admissions

3. The Respondent admits the facts of the allegation at paragraph 2.1 and that by virtue of those facts, he has breached Principle 2 and Principle 6 of the SRA Principles 2011.
4. The Respondent admits the facts of the allegation at Paragraph 2.2, and that by virtue of those facts, he has breached Principle 2 and Principle 6 of the SRA Principles 2011.

Agreed Facts

5. The following facts and matters are agreed between the SRA and the Respondent.

Professional Details

- 5.1 The Respondent, born on 1960, is a Solicitor, having been admitted to the Roll of Solicitors on 15 September 1995.
- 5.2 At all material times, the Respondent, was employed by Frisby and Small LLP (the Firm) based at 5 De Montfort Street, Leicester, LE1 7GE. The Respondent's employment with the firm ended on 31 May 2019.
- 5.3 The Respondent remains on the Roll of Solicitors however he does not have a current practising certificate. The Respondent's most recent practising certificate expired on 31 October 2019 and a renewal application has not been received by the Applicant.

Facts of the offences giving rise to the allegations

- 5.4 At 07.30 hours on Wednesday 13 February 2019, officers from Leicestershire Police executed a search warrant (in connection with indecent images of children) at the Respondent's home address.
- 5.5 Five cannabis plants of varying stages of maturity were located in the Respondent's garage. Cannabis (which had been prepared for personal use) was also located inside the house however no evidence of dealing or conspiracy to supply drugs was located.
- 5.6 The Respondent's work tablet was manually examined by the officers executing the warrant. The tablet was found to contain 'suspicious' file names and was seized by the police for examination, with Leicestershire Police's Digital Forensics Unit downloading the contents of both the tablet and a MicroSD card installed in it.
- 5.7 An officer analysed the downloaded data. On the memory card, there were 19 compressed files, each protected with a password. Having obtained the password and accessed the files, the police found that the 19 compressed files contained 23 indecent videos of children. The 23 videos were classified as follows:
 - i) fifteen Category A files
 - ii) five Category B files
 - iii) three Category C files
- 5.8 Further evidence on the tablet indicated the use of privacy cleaners and virtual private networks to disguise online activity.

5.9 The Respondent was interviewed on 10 July 2019 and provided a prepared statement to Leicestershire Police which said the following:

'I, Andrew McNeill wish to make a statement. I understand it can be used in evidence. In relation to the indecent images found on Exhibit GH2 [the tablet], I have full responsibility for this and admit to the making of these images. In relation to the cannabis located within [address redacted] and the garage attached, I accept that I am responsible for the cultivation of this cannabis which was for my own use.'

5.10 The Respondent then gave no comment to all questions asked by the Police.

5.11 On 10 June 2020 in Leicester Magistrates Court, the Respondent was convicted of:

- i) three counts of making indecent photographs of a child; and
- ii) one count of producing a controlled drug of Class B – Cannabis.

5.12 The Respondent was committed to the Crown Court for sentence and, on 24 September 2020, was sentenced to eight months imprisonment, suspended for 18 months, and ordered to pay a £150.00 fine.

5.13 The Respondent was also:

- i) placed on the Sex Offender Register for 10 years
- ii) subjected to a Sexual Harm Prevention Order for 10 years
- iii) ordered to complete 80 hours of unpaid work.

Non-Agreed Mitigation

6. The following mitigation is put forward by the Respondent and is not endorsed by the SRA:

6.1 My wife has two children from her first marriage. Since 2013, my wife and I have lived with her two children as a family. After the police attended my home, I admitted to my wife that I had downloaded a number of indecent images of children onto my tablet. I left the family home the same day and moved into temporary accommodation. My wife spoke to her children who confirmed to her that they had never experienced any sexual abuse or contact from me, and that neither had any suspicion that I had been viewing indecent images.

6.2 My wife allowed me to return to the family, a significant factor in this decision being that both children were very supportive of me.

6.3 After my family, my next concern was in mitigating the effect of my actions on my colleagues and clients. I thought that it would be best if I could put as much distance as possible between me and my firm, so that it would be insulated from any adverse effects that might follow from any publicity around my inevitable conviction. Within two weeks of the police visit I had given my partner notice of my leaving and my last day of work was 31 May 2019.

6.4 I referred myself to the Aurora Project in Nottingham. This is a charitable project which is part of the Safer Living Foundation. It aims to work with people who are having trouble with their sexual thoughts and activities. I undertook one on

one counselling with them, and then moved to weekly group work. When the probation service interviewed me in relation to preparing a pre-sentence report, the report's author told the court that the work that I had done with that project went further than any work that the probation service itself could offer me. The judge expressly stated in his sentencing remarks that he had two reasons to conclude that he could suspend my prison sentence: "the steps that you have taken to address your criminality in the intervening period; your place in the community, not so much in your professional life but the other support you have given."

- 6.5 In relation to the cannabis, I did not enjoy buying from drug dealers and in 2018, I successfully grew two small cannabis plants in my back garden. The success of this led me to try a slightly more ambitious grow, and to do so inside. When the police visited, I admitted my sole responsibility for growing the plants.
- 6.6 From the moment that the police came to my house on 13 February 2019, I knew that my career as a solicitor would be over. I applied to remove my name from the roll, with the intention of thereby saving the costs and trouble involved in a referral to this tribunal. However, the SRA declined my application, even though I said that I would be happy to undertake not to ever apply for my name to be restored.
- 6.7 The evidence is that I had no history of any long-standing interest in indecent images of children; the files were all downloaded in a four-week period in January and February 2019. This is consistent with it being an uncharacteristic aberration. There was no extensive collection, and no sharing of images with other people.
- 6.8 I respectfully submit that the outcome of striking my name from the roll, and having me pay the SRA's costs, is a sufficient and proportionate sanction. Any further financial penalty would have to be paid from my own limited savings, with little realistic chance that I would be able to replenish those savings by working again. Instead, any such penalty would have consequences that would inevitably fall upon my family and our future.

Outcome

7. Subject to the Tribunal's approval, the Respondent agrees to be struck off the Roll of Solicitors. It is agreed that that this sanction is in line with the Tribunal's Guidance Note on Sanctions.
8. The seriousness of the misconduct is at the highest level such that a lesser sanction is inappropriate and the protection of the public as well as the protection of the reputation of the legal profession requires it.

Costs

9. The Respondent agrees to pay the SRA costs of the application in the sum of £1,290.00.

Dated this 28th May 2021

Signed:

Head of Legal & Enforcement
On behalf of the SRA

Andrew McNeill